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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 621

HENRY LEVAUR, INC., COLT-BRADY COMPANY, AND BRADBURN MOTORS COMPANY, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 351–358) is reported in 115 F. (2d) 105. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 316–340) are reported in 17 N. L. R. B. 1034.

JURISDICTION

The decree of the court below (R. 358–359) was entered on October 25, 1940. The petition for a writ of certiorari was filed on December 12, 1940.

The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act (Pet. 22).

QUESTION PRESENTED

Whether the National Labor Relations Act applies to employers whose business consists of the purchase and sale of motor vehicles, parts and accessories, which are in large part delivered to them through the channels of interstate commerce and substantial amounts of which are in turn disposed of by them to persons located outside the State wherein the employers' places of business are situated.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*) are set forth at pages 3–6 of the petition.

STATEMENT

Upon proceedings had pursuant to Section 10 of the National Labor Relations Act,[1] the Board

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[1] These proceedings were: Charges and amended charges filed by the International Association of Machinists, Local No. 1017 (R. 13–14, 27–28, 38–39); a separate complaint issued by the Board against each petitioner (R. 9–13, 23–27, 34–38); answers (R. 18–21, 30–33, 41–44); an order of the Board consolidating the cases (R. 16); a hearing before a trial examiner (R. 45, *et seq.*); a stipulation between the Board and each petitioner for the entry by the Board, and enforcement by the Circuit Court of Appeals, of a specified

issued its findings of fact, conclusions of law, and order (R. 316–340). The Board's findings of fact relate solely to the applicability of the Act to petitioners' operations, enforcement of a specified order having been stipulated subject only to petitioners' right to contest the applicability of the Act to them (see note 1, p. 2, *supra*). The facts, as found by the Board and as shown by the undisputed evidence, may be summarized as follows: [2]

Each petitioner has its principal place of business at Providence, Rhode Island, and is engaged in the purchase, sale, exchange, servicing, and repair, of motor vehicles, parts and accessories (R. 332; R. 299, 304, 308–309). Petitioners are what is known to the trade as "distributors," that is, they operate under agreements with manufacturers of automobiles and accessories for the sale and distribution of the manufacturers' products within sales areas specified in the agreements (R. 332; R. 63–65, 194–196, 200–237, 239–260, 279–297). Each petitioner, with the approval of the manufacturer, allots to various "dealers" portions of its assigned sales area (R. 332; R. 216–217, 244, 283). Petitioner Henry Levaur, Inc.,

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order, subject only to the petitioner's right to contest the applicability of the Act to its business (R. 298–302, 303–307, 307–311); an order of the Board approving each of the stipulations (R. 312–313); and oral argument before the Board (R. 314–316).

[2] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

has within its sales area 13 dealers in Rhode Island and 3 in Massachusetts (R. 335; R. 175–176); Bradburn Motors Company has 10 dealers in Rhode Island and 1 in Massachusetts (R. 333; R. 69); Colt-Brady Company has 17 dealers in Rhode Island and 3 in Connecticut (R. 334; R. 118–119). Automobiles to meet the sales requirements of the distributor's sales area are customarily purchased by the distributor from the manufacturer and are transported by railway or truck in interstate commerce to the distributor, which receives and "services" them [3] in preparation for delivery to its dealers or to individual retail purchasers (R. 332–333; R. 71–74, 78–79, 111–113, 119–123, 125, 177–180). Delivery is normally made to the dealers, as well as to individual retail purchasers, at the place of business of each petitioner (R. 332; R. 73, 114, 122, 181–182). Each petitioner also regularly exchanges cars with other distributors, both within and without the State (R. 333, 334, 335; R. 86–88, 127–128, 181).

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[3] This operation consists of tightening the body, tuning the motor, inspecting the brakes, lights, and mechanical parts, washing and polishing, etc. Bradburn Motors Company, alone, of the petitioners, usually omits this servicing operation in the case of cars sold to associated dealers (R. 74).

The employees who perform these servicing operations, as well as those who unload and drive the cars from the point of arrival to petitioners' places of business or warehouses, are members of petitioners' servicing, repair, and maintenance staffs, which, by stipulation, in the case of each petitioner constitute a unit appropriate for collective bargaining (R. 333; R. 111–112, 119–120, 178–179, 299, 304, 309).

Nearly all of the automobiles, parts, and accessories purchased or obtained in exchanges by each petitioner, come to it through the channels of interstate commerce (R. 333–335; Appendix, p. 9, *infra*).[4] Substantial amounts of the products received by each petitioner are thereafter sold to or exchanged with dealers, distributors, and individual purchasers located outside the State of Rhode Island (*ibid.*).

The Board concluded that the operations of each petitioner constituted "a continuous flow of trade, traffic, and commerce among the several States," and issued an order against each petitioner in the form provided in the stipulation (R. 336–339; note 1, p. 2, *supra*). Pursuant to the Board's petition for enforcement (R. 1–8), the court below, on October 25, 1940, handed down its opinion and entered

[4] For the convenience of the Court, we have set forth in tabulated form in the Appendix the number and approximate value of (a) new cars purchased and shipped to each petitioner from outside the State; (b) new cars received in exchanges from other distributors located outside the State; (c) used cars acquired from owners located outside the State; and (d) parts and accessories received from outside the State. The Appendix likewise shows the number and approximate value of (a) new cars sold to dealers and retail customers located outside the State; (b) new cars exchanged to distributors located outside the State; (c) used cars sold to purchasers located outside the State; and (d) parts and accessories sold to purchasers located outside the State. As to each type of transaction, the proportion, by value, of the interstate dealings to the total volume of the petitioner's transactions of that type, is also set forth. The period covered is from January 1938 to June 1939. The computations are based on the undisputed testimony of petitioners' officials (R. 76–92, 124–133, 180–184).

its decree enforcing the Board's order against each petitioner (R. 351–359).

ARGUMENT

1. By their sales and exchanges of substantial quantities of cars and accessories to out-of-State dealers and individual purchasers, petitioners are engaged in interstate commerce; the Act is therefore plainly applicable to their operations. *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board,* 303 U. S. 453, 463; *cf. United States* v. *Rock Royal Co-operative, Inc.,* 307 U. S. 533, 568–569. Petitioners' apparent reliance (Pet.19, 30, 31) upon the fact that they do not themselves transport the commodities to the destination in other States but make delivery within the State of Rhode Island, is plainly mistaken. *Santa Cruz* and *Rock Royal* cases, *supra; National Labor Relations Board* v. *Fainblatt,* 306 U. S. 601, 605–606; *National Labor Relations Board* v. *Bradford Dyeing Assn.,* 310 U. S. 318, 326.

2. A further basis for application of the Act to petitioners' enterprises—a basis which the court below expressly laid to one side (R. 356, 358)—is afforded by petitioners' receipt in interstate commerce of large quantities of automobiles and accessories. *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 290–291; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50, 54; *Local 167, Brotherhood of Teamsters* v. *United States,* 291 U. S. 293, 297. The Circuit Courts of Appeals have uniformly

held, in cases arising under the National Labor Relations Act, that the threat of obstruction to a flow of interstate commerce by labor disputes arising in the State of destination warrants application of the Act. *Newport News Shipbuilding & Dry Dock Co.* v. *National Labor Relations Board,* 101 F. (2d) 841, 843 (C. C. A. 4), modified and affirmed, 308 U. S. 241; *National Labor Relations Board* v. *A. S. Abell Co.,* 97 F. (2d) 951, 955 (C. C. A. 4); *National Labor Relations Board* v. *Norfolk Shipbuilding & Drydock Corp.,* 109 F. (2d) 128, 129 (C. C. A. 4); *Virginia Electric and Power Co.* v. *National Labor Relations Board,* decided November 12, 1940 (C. C. A. 4); *Consumers Power Co.* v. *National Labor Relations Board,* 113 F. (2d) 38, 40 (C. C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Company,* 110 F. (2d) 780, 784 (C. C. A. 9); *Southern Colorado Power Co.* v. *National Labor Relations Board,* 111 F. (2d) 539, 543 (C. C. A. 10). There are no contrary decisions.

3. The contention (Pet. 32) that even if petitioners are "engaged in interstate commerce," the Board was without power to issue an order against them "in the absence of supporting evidence that a labor dispute had in fact threatened or obstructed interstate commerce," is plainly without merit. The Act itself establishes the nexus between unfair labor practices and a burdening effect upon interstate commerce (Section 1) and application of the Act need not await realization of that effect. *Con-*

solidated Edison Co. v. *National Labor Relations Board*, 305 U. S. 197, 222; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 326.[5]

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1941.

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[5] For the same reason, the assertion (Pet. 26) that a strike by petitioners' employees during 1939 did not diminish the quantity of business of any of the petitioners, is beside the point, as the court below observed (R. 358). Petitioners do not question the basis of the Act as an exercise of the Federal commerce power, namely, that it applies to prevent unfair labor practices found by Congress to be sources of industrial strife which burdens commerce. *Cf. National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 43; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, 56. The fact that in a single instance a strike has not obstructed shipments in commerce does not indicate that the premise upon which Congress grounded the statute will not prove valid if another industrial dispute arises between any of the petitioners and its employees.

A. HENRY LEVAUR, INC. (R. 180-184)

	Received		Approximate percentage by value of total volume of business		Delivered		Approximate percentage by value of total volume of business
	No.	Approximate value			No.	Approximate value	
New cars purchased	1,544	$1,169,000.00	100%	New cars sold	172	$120,000.00	10%
New cars received in exchanges	109	76,000.00	60%	New cars exchanged to other distributors	109	76,000.00	60%
Used cars acquired	25	7,500.00	4%	Used cars sold	17	5,100.00	2½%
Parts and accessories purchased	------	47,891.00	100%	Parts and accessories sold	------	------	------

B. BRADBURN MOTORS CO. (R. 76-92)

New cars purchased	954	$637,346.47	97%	New cars sold	53	$40,659.57	5%
New cars received in exchanges	29	------	100%	New cars exchanged to other distributors	29	------	100%
Used cars acquired	24	4,658.63	3%	Used cars sold	24	8,303.00	4%
Parts and accessories purchased	------	53,718.00	100%	Parts and accessories sold	------	6,336.00	11%

C. COLT-BRADY CO. (R. 124-133)

New cars purchased	1,920	$1,346,157.00	100%	New cars sold	99	$67,500.00	5%
New cars received in exchanges	72	50,000.00	100%	New cars exchanged to other distributors	72	50,000.00	100%
Used cars acquired	73	17,000.00	8%	Used cars sold	51	12,500.00	5%
Parts and accessories purchased	------	71,267.41	100%	Parts and accessories sold	------	1,115.00	1%

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